IN THE SUPREME COURT OF IOWA
Supreme Court No. 16-0824

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN WALTER MULDER,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SIOUX COUNTY
THE HONORABLE STEVEN J. ANDREASEN, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

The defendant asserts without explanation or rationale that the Supreme Court should retain this case. Defendant's Proof Br. at 1. The State disagrees. The Court of Appeals can and has addressed the propriety of juvenile incarceration in decisions that post-date last term's Supreme Court decision in *State v. Sweet*. *See State v. Astello*, No. 15-0206, 2016 WL 3282035, at *1 (Iowa Ct. App. June 15, 2016); *State v. Majors*, No. 14-1670, 2016 WL 3272074, at *5 (Iowa Ct. App. June 15, 2016); *State v. Roby*, No. 15-0175, 2016 WL 3269553, at *5 (Iowa Ct. App. June 15, 2016) (Danilson, C.J., concurring); *State v. Zarate*, No. 15-0451, 2016 WL 3269569, at *3 (Iowa Ct. App. June 15, 2016). This case, therefore, can be decided based on existing legal principles and should be transferred to the Court of Appeals. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant, John Walter Mulder, appeals the sentence imposed following re-sentencing in the Sioux County District Court, the Hon. Steven J. Andreasen presiding.

Course of Proceedings

The State accepts the first paragraph of the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3). The State rejects the second paragraph, as it mischaracterizes or misstates the holding in *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014), and—in any event—legal argument is not appropriate for the course of proceedings section.

Facts

The Iowa Supreme Court provided the following summary of the facts on direct appeal:

> On the night of April 23, 1976, Jean Homan was asleep in her bedroom. Her husband, Carl, was in an adjoining twin bed but not asleep. Carl caught a brief glimpse of a figure reflected in a mirror. Thinking it might be his son returning unexpectedly from college, Carl called out his name. There was no response, but immediately Carl saw the barrel of a rifle extend into the room, followed by a single shot. Jean, who had awakened, cried out that she had been hit. Carl jumped out of bed and pursued the intruder long enough to see him escape across a nearby golf course. He then returned to the bedroom to aid his wife. The deputy county examiner, who arrived on the scene a half hour later, pronounced Mrs. Homan dead and fixed the time of her death at shortly before midnight. Other facts will be recited as we discuss the issues to which they relate.

State v. Mulder, 313 N.W.2d 885, 887 (Iowa 1981). The Supreme Court found there was sufficient evidence for the jury to conclude, as it did, that the defendant was guilty of first-degree murder. *See id.* at 888–89.

ARGUMENT

I. The Defendant's Sentence Is Not Unconstitutional.

Preservation of Error

Pursuant to Iowa Supreme Court case law, the State is unable to contest error preservation. *State v. Lyle*, 854 N.W.2d 378, 382 (Iowa 2014).

Standard of Review

To the extent the challenges raised are constitutional in nature, review is de novo. *State v. Lyle*, 854 N.W.2d 378, 382 (Iowa 2014).

Merits

As the State understands the defendant's claims, he seems to assert both that any minimum term of incarceration for a juvenile offender violates the Iowa Constitution and that a 42-year minimum term of incarceration is a de facto life-without-parole sentence. *See* Defendant's Proof Br. at 9–13. Neither claim warrants relief.

A. The Iowa Constitution does not prohibit minimum terms of incarceration.

The defendant's first request—that this Court ban any minimum term of incarceration for juveniles—is not supported by any decision of the Iowa Supreme Court, the Iowa Court of Appeals, or any other court, anywhere in this country. *See generally* Defendant's Proof Br. It should be rejected for that reason alone. *See* Iowa R. App. P. 6.903(2)(g); 6.904(4) (both requiring citation of legal authority).

What the defendant really requests is for this Court to completely subsume the policymaking function of the legislature. This, our Constitution does not permit. Instead, the Iowa Constitution explicitly divides power between the three departments of government, "and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others…" Iowa Const. art. III, § 1. Under this separation of powers, "[t]he legislature possesses the power to prescribe punishment for crime, including the upper and lower limits." *State v. Jackson*, 204 N.W.2d 915, 916 (Iowa 1973) (citations omitted). The judicial department's role in sentencing "is the power to decide and pronounce a judgment and carry it into effect." *Klouda v. Sixth Judicial Dist. Dep't of Corr. Servs.*, 642

N.W.2d 255, 261 (Iowa 2002) (citations omitted). When a court modifies the criminal penalties, the judicial department functionally re-writes the Code and "intrude[s] on the legislative prerogative to define crimes." Frank O. Bowman, III, *Juvenile Lifers and Judicial Overreach: A Curmudgeonly Meditation on* Miller v. Alabama, 78 Mo. L. Rev. 1015, at 1018–19 (2013).

The constitutional prohibition against cruel and unusual punishment was intended only to operate at the most extreme margins, to correct gross disproportionalities. *See State v. Oliver*, 812 N.W.2d 636, 650 (Iowa 2012) (noting the Court has traditionally "owe[d] substantial deference to the penalties the legislature has established"). Yet the defendant asks this Court to intervene in every juvenile sentencing case with a minimum term of incarceration—to modify far more than just the most extreme sentences. There is no legitimate basis for expanding the Iowa Constitution to suit the defendant's needs. His claim is not supported by the text of the Iowa Constitution or any aspect of our constitutional history. *See, e.g.*, Iowa Const. art. 1, § 17 (functionally identical to the Eighth Amendment to the federal Constitution); Patricia L. Bryan, *John Wesley Elkins, Boy Murderer, and His Struggle for Pardon*, 69 The

Annals of Iowa, 261, 262 (Summer 2010) (describing how an 11-year-old offender was sentenced to life without parole); William J. Peterson, The Story of Iowa, vol. II, at 832 (Lewis Hist. Pub. Co. 1952) (noting that, during Iowa's frontier days, the punishment for stealing horses was summary execution); *State v. Dooley*, 57 N.W. 414, 417 (Iowa 1894) (affirming execution of juvenile murderer).

But even if the defendant had mustered *some* authority to support his claim, no cogent analysis supports his argument that this Court should categorically ban minimum terms of incarceration. To mount a categorical challenge, the Court first considers "objective indicia of society's standards … to determine whether there is a national consensus against the sentencing practice at issue." *Graham v. Florida*, 560 U.S. 48, 61 (2010) (quotation omitted). Second, "the Court must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution." *Id.* "The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question." *Id.* at 67. "In this inquiry the Court also

considers whether the challenged sentencing practice serves legitimate penological goals." *Id.*

Despite recent changes in juvenile sentencing practices, Iowa has not abandoned the imposition of minimum prison sentences for juveniles. From *Miller* to *Lyle*, the "constitutional infirmity" centered on the mandatory imposition of the sentence. And in the short time since this Court's expansion of *Miller*, the State of Iowa—through its elected representatives—has embraced discretionary minimum sentencing for juveniles who commit forcible felonies, like the defendant. *See* 2015 Iowa Acts ch. 65, §§ 1–2 (codified as Iowa Code § 902.1(2)–(3)) (permitting discretionary minimum sentencing for juveniles who commit class A felonies); 2013 Iowa Acts ch. 42, § 14 (codified as Iowa Code § 901.5(14)) (providing similar flexibility for penalties for commission of a Class B felony). Thus, the community consensus in Iowa—as expressed through judicial action and legislative enactments—supports imposing minimum terms of incarceration.

Likewise, there is no national consensus against discretionary minimum sentencing. Iowa is already an outlier by prohibiting all mandatory minimums. *See Lyle*, 854 N.W.2d at 386 ("[W]e recognize

no other court in the nation has held that its constitution or the Federal Constitution prohibits a statutory schema that prescribes a mandatory minimum sentence for a juvenile offender."). And in the years since *Lyle*, other states have rejected the path taken by the Iowa Supreme Court. *See, e.g., State v. Imel*, No. 2 CA-CR 2015-0112, 2015 WL 7373800, at *3 (Ariz. Ct. App. Nov. 20, 2015) ("We do not find *Lyle* persuasive."); *People v. Rigmaden*, No. C071533, 2015 WL 5122916, at *18 (Cal. Ct. App. Sept. 1, 2015) ("… we decline to follow *Lyle* …."); *State v. Anderson*, No. 26525, 2016 WL 197122, at *11 ¶ 38 (Ohio Ct. App. Jan. 15, 2015) ("Upon review, we decline to adopt the majority approach in *Lyle*.").

Although this "consensus is not dispositive," *see Lyle*, 854 N.W.2d at 387, any unbalance resulting from the lessened culpability of juveniles was resolved when *Lyle* made minimum sentences discretionary. The Court identified individualized sentencing proceedings—not elimination of a class of sentences—as the mechanism to "honor the decency and humanity embedded within article I, section 17 of the Iowa Constitution …" *Id.* at 403. Requiring a judge to consider the juvenile murderer's unique characteristics and the attendant circumstances of youth fulfills the constitutions'

protections against cruel and unusual punishment. The defendant here received such an individualized sentencing hearing, thus curing any constitutional concerns.

Lyle's restoration of sentencing discretion also restores the penological legitimacy of minimum sentences. Even if not to the same degree as adults, juvenile offenders are still culpable. *Lyle*, 854 N.W.2d at 398 ("'[W]hile youth is a mitigating factor in sentencing, it is not an excuse.'" (quoting *State v. Null*, 836 N.W.2d 41, 75 (2013)). Individualized sentencing provides the opportunity to separate more culpable juveniles from those whose diminished culpability makes them poor subjects for retribution. Likewise, individualized sentencing can identify juveniles who are good targets for deterrence because their crimes were not clouded by impetuosity. And individualized sentencing can distinguish juveniles who are more amenable to rehabilitation from those who must be incapacitated with a minimum sentence.

Discretion changes everything. *Lyle* gave Iowa judges the power to mete out punishment that fits both the crime and the juvenile offender. Just as mandatory minimums held the potential to sweep up too many juveniles underserving of such punishment,

tossing out all minimum sentences sweeps too widely by eliminating the legislature's chosen punishment for the juveniles who do deserve it. Therefore, our Constitution does not demand the categorical prohibition of all discretionary minimum sentences for juveniles

In the end, this case presents nothing new. *Lyle* controls. And there, the Iowa Supreme Court held that the Iowa Constitution permitted lengthy juvenile sentences—including minimum sentences—that are not mandatorily imposed:

> It is important to be mindful that the holding in this case does not prohibit judges from sentencing juveniles to prison for the length of time identified by the legislature for the crime committed, nor does it prohibit the legislature from imposing a minimum time that youthful offenders must serve in prison before being eligible for parole. Article I, section 17 only prohibits the one-size-fits-all mandatory sentencing for juveniles.

Lyle, 854 N.W.2d at 403. This Court should follow that holding today and reject the defendant's request for a categorical bar to minimum prison terms following an individualized sentencing hearing.

B. The defendant has not proven he received a functional life sentence.

The defendant's assertion regarding 42 years being a de facto life term is waived in the appellate briefing. The defendant asserts,

without any supporting authority, that "[T]here is no question that a sentence of life with a chance of parole after 42 years equates to life with no parole." Defendant's Proof Br. at 12. He also asserts, without authority, that "[n]one of the 38 Iowa juvenile offenders originally serving life without parole has been paroled, no matter how extensively he or she may have been rehabilitated." Defendant's Proof Br. at 12–13. This Court does not consider skeletal claims that are not supported by authority and this claim should be rejected on that basis. *In Re Det. of West,* 2013 WL 988815, at *3 (Iowa Ct. App. 2013) ("A skeletal argument, really nothing more than an assertion, does not preserve a claim … Judges are not like pigs, hunting for truffles buried in briefs." (internal citation and quotation omitted)); *see* Iowa R. App. P. 6.903(2)(g)(3); Iowa R. App. P. 6.904(4); *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974).

To the extent the Court reaches the merits of this claim, neither of the defendant's assertions is true. First, the defendant does not cite to any case, from any jurisdiction, that has found a 42-year

sentence (that will expire when the offender is in his late 50s)[1] is a de facto life sentence and unconstitutional, when imposed following an individualized sentencing hearing. *See State v. Ragland*, 836 N.W.2d 107, 122 (Iowa 2013) (requiring an individualized sentencing hearing for a 60-year sentence). Unlike functional life sentences, an opportunity for parole in the 50s is within the average life expectancy of an offender. *Contra People v. Caballero*, 282 P.3d 291, 297–98 (Cal. 2012) (invalidating 100-year sentence); *Floyd v. State*, 87 So. 3d 45, 46 (Fla. Dist. Ct. App. 2012) (per curiam) (invalidating sentence that provided earliest opportunity for parole at age 97).

Second, there are multiple juvenile murderers on parole or work release. For example, Iowa Board of Parole records[2] as of Oct. 17, 2016, indicate that:

- Kristina Fetters (offender # 0808149) was granted parole in 2013.
- Yvette Louisell (offender # 0805144) was granted work release in July of 2016.

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[1] There is some ambiguity about the exact date the defendant will be eligible for parole due to issues with earned-time credits and other calculations. The district court estimated he would be eligible for parole in September of 2020, at age 59. *See* re-sent. tr. p. 78, lines 12–20.

[2] Offender searches can be conducted through the Board of Parole website at http://www.bop.state.ia.us/OffenderInformation (last accessed Oct. 17, 2016).

- Mitchell Ronek (offender #0800760) was granted parole in August of 2016.
- James Corder (offender # 0804504) was granted parole in September of 2016.

In addition, numerous other juvenile murderers' sentences have been reviewed by the Board of Parole or have pending interviews. (While this information is outside the record, its inclusion here is solely to rebut the defendant's inaccurate and unsupported assertion that no juvenile murderers have been paroled.) Perhaps more importantly than any of these individual cases, the Supreme Court of the United States has held that the Constitution does not guarantee parole for any offender—merely the meaningful opportunity for parole. *Graham*, 560 U.S. at 75 ("A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime.").

In short, *Sweet* does not reach this case because the defendant was not sentenced to life without parole, and a prison sentence imposed on a juvenile murderer remains constitutionally valid, so long as it is preceded by an individualized sentencing hearing. *See State v. Majors*, No. 14-1670, 2016 WL 3272074, at *6 (Iowa Ct. App. June 15, 2016); *State v. Zarate*, No. 15-0451, 2016 WL 3269569, at *4 (Iowa Ct. App. June 15, 2016).

II. By Reading the District Court's Statements in Context, It Is Clear the Court Reasonably Applied the Juvenile-Sentencing Case Law.

Preservation of Error

To the extent the defendant's complaints about the application of the *Miller/Lyle* factors involve a claim of an illegal sentence, that portion of his argument may be heard on appeal. *State v. Lyle*, 854 N.W.2d 378, 382 (Iowa 2014).

Waiver

To the extent the defendant briefly references principles of ineffective assistance, any claim regarding ineffective assistance is waived for failure to cite legal authority. Division II of the defendant's brief does not cite any ineffective-assistance case law—not even *Strickland*. That claim is waived. *See* Iowa R. App. P. 6.903(2)(g); 6.904(4).

Standard of Review

Under *Lyle*, the decision whether to impose a minimum sentence falls within the sentencing court's discretion. *See State v. Lyle*, 854 N.W.2d 378, 404 (Iowa 2014) (giving the sentencing court "discretion to consider youth and its attendant circumstances as a mitigating factor and to impose a lighter punishment by eliminating the minimum period of incarceration without parole"). Under the

abuse of discretion standard, this Court's "task on appeal is not to second guess the decision made by the district court, but to determine if it was unreasonable or based on untenable grounds." *Seats*, 865 N.W.2d at 553 (quoting *State v. Formaro*, 638 N.W.2d 720, 724–25 (Iowa 2002)).

Merits

As the State understands the defendant's claims in Division II, he makes three at-times-overlapping arguments: first, he claims the district court did not apply the *Lyle* factors; second, he claims the record does not support that this is the unusual case where "a lengthy minimum [prison] term was appropriate"; and third, he claims the district court considered improper factors, including the victim impact statements. *See* Defendant's Proof Br. at 14–15. None of these claims have merit.

A. The district court did not abuse its discretion in applying the *Lyle* factors.

In *Lyle*, the Iowa Supreme Court identified a series of factors that sentencing courts should use to determine whether to impose a minimum prison term, including:

> (1) the age of the offender and the features of youthful behavior, such as "immaturity,

> impetuosity, and failure to appreciate risks and consequences";
>
> (2) the particular "family and home environment" that surround the youth;
>
> (3) the circumstances of the particular crime and all circumstances relating to youth that may have played a role in the commission of the crime;
>
> (4) the challenges for youthful offenders in navigating through the criminal process; and
>
> (5) the possibility of rehabilitation and the capacity for change.

Lyle, 854 N.W.2d at 404 n.10. The district court did not abuse its discretion in applying these factors.

The teachings of *Lyle* appear throughout the district court's 12-page explanation of his reasons for sentencing the defendant:

- "[C]hildren are constitutionally different from adults." Sent. tr. p. 68, lines 7–9.
- "[Juveniles have a] lack of maturity, underdeveloped sense of responsibility, vulnerability to peer pressure, and [a] less fixed … character … that impacts the ability to be rehabilitated." Sent. tr. p. 68, lines 9–13.
- "[T]he defendant's family and home environment such as any information concerning abuse, parental neglect, persona or family drug or alcohol abuse, prior exposure to violence, lack of parental supervision, lack of an adequate education, and a juvenile susceptibility to psychological or emotional damage." Sent. tr. p. 68, lines 14–21.
- "[T]he circumstances of the offense itself, the extent of the defendant's participation and the conduct, and the way any familiar or peer pressures may have affected him." Sent. tr. p. 68, line 22 — p. 69, line 1.

- "[T]hat juveniles are more capable of change than are adults. Their actions are less likely to be evidence of irretrievably depraved character." Sent. tr. p. 69, lines 2–5.

The district court applied these teachings to the factual record developed at the re-sentencing hearing, explicitly noting:

- The defendant's age at the time of the offense. Re-sent tr. p. 72, lines 7–13.
- The defendant's poor family life and the "role [it played] in his development as a youth." Re-sent tr. p. 72, lines 7–13.
- The defendant's history of attempts at rehabilitation prior to incarceration. Re-sent. tr. p. 72, line 22 — p. 73, line 15; p. 75, line 21 — p. 76, line 6.
- The defendant's mental-health diagnosis of antisocial personality disorder. Re-sent. tr. p. 73, line 16 — p. 74, line 7.
- The nature of the crime, insofar as it appears to have been done willfully and deliberately (potentially contrasted with impetuously or under coercion). Re-sent. tr. p. 74, line 20 — p. 75, line 11.
- And the defendant's prospects for rehabilitation. Re-sent. tr. p. 76, lines 7–19.

The district court also discussed a number of factual aspects of this case that may not be present in the sentencing (rather than *re-*sentencing) of most juvenile murderers, including:

- The defendant's "serious violations" in prison, including an escape attempt. Re-sent. tr. p. 70, lines 10–19.
- The defendant's employment while incarcerated, including work in "scared straight" programs. Re-sent. tr. p. 71, lines 3–14.

- A trend toward fewer violations of disciplinary rules in recent years. Re-sent. tr. p. 71, lines 15–23.

And while these considerations may not be relevant to a new sentencing for a crime committed by a juvenile in 2016, they are crucial components to understand this defendant in light of the years following his conviction.

The defendant's complaints about the district court's application of the *Lyle* factors is a little hard to follow, but largely he seems to nit-pick at the language used by the sentencing judge. *See* Defendant's Proof Br. at 15–23. At other points, the defendant is hypercritical that the district court did not recite all relevant facts from the hearing testimony, and instead chose to summarize or paraphrase. *E.g.*, Defendant's Proof Br. at 17–18 (complaining that the district court was not specific enough about why the defendant did not have a good home life). Obviously summarizing the evidence does not mean a sentencing court has abused its discretion. The defendant cites no authority supporting such a claim, for there is none.

Some of the defendant's complaints were waived by his failure to present any evidence at the sentencing hearing. For example, he asserts that the judge did not consider substance abuse as a potential

mitigating factor. Defendant's Proof Br. at 18–19. Yet the defendant's brief des not cite any *evidence*[3] the judge should have considered, nor does the record disclose that the defendant offered any evidence or testimony concerning substance abuse. Similarly, the defendant complains about the sparse analysis concerning whether the defendant was able to effectively assist in his defense and whether he understood his options in the criminal justice system. Defendant's Proof Br. at 19. Yet the defendant did not call any witnesses or present relevant evidence. We cannot fault the district court for not making detailed findings in this area when the defendant himself failed to present any evidence or testimony addressing the issue.

B. The defendant's disagreement with the district court is not a valid basis for reversal.

The defendant next makes a two-sentence complaint:

> This is not one of those rare cases where a lengthy minimum term of incarceration is appropriate. In light of the mitigating factors that must be considered in resentencing, the district court erred in concluding this is a rare case where a lengthy minimum term (42 years) is appropriate.

[3] He does cite briefly to a passing reference in argument, but the arguments of counsel are not evidence.

Defendant's Proof Br. at 23. This claim does not warrant relief. To the extent this argument was intended to advance a different claim than the abuse-of-discretion issue considered in the previous subdivision, it is waived for failure to cite the legal authority, as the State cannot discern the basis of the claim to mount a response. *See* Iowa R. App. P. 6.903(2)(g); Iowa R. App. P. 6.904(4). To the extent this Court can reach the merits, the lengthy sentenced was supported by the Court's lengthy discussion of the competing sentencing interests. *See* re-sent. hrg. tr. pp. 65–80.

C. The district court did not consider improper evidence at re-sentencing.

The defendant next asserts that various items presented at the sentencing hearing were inappropriate or should have not have been considered. Defendant's Proof Br. at 23–37. None of his complaints have merit.

First, he complains that the district court improperly considered a Department of Corrections psychological report because it is "confidential." Defendant's Proof Br. at 23. District courts routinely consider confidential information at sentencing, most frequently in the form of a pre-sentence instigation report. *See* Iowa Code §§ 902.1, 902.2, 902.3, 902.4 (2013). The defendant cites no

authority suggesting this is a proper basis for reversal, for there is none, and this complaint should be set aside. Also, although it is not entirely clear to which report the defendant is referring, the district court did order the production of a psychological report and provided appropriate orders regarding its confidentiality. *See* 12/21/2015 Order; App. 86; 3/21/2016 Order; App. 88.

Next, the defendant complains about the victim impact statements. *See* Defendant's Proof Br. at 23–26. His argument seriously misinterprets the law and his claim that Jean Homan's descendants were not harmed by the murder is without merit. The crux of the defendant's complaint seems to be his assertion that only "immediately family members" of the deceased can give victim impact statements following a murder conviction. *See* Defendant's Proof Br. at 24. This is not correct. The Code defines victim broadly, to include "a person who has suffered physical, emotional, or financial harm as the result of a public offense or a delinquent act, other than a simple misdemeanor, committed in this state." Iowa Code § 915.10(3) (2013). *In addition*, victim impact statements can be given by "immediate family members of a victim who died or was rendered

incompetent as a result of the offense or who was under eighteen years of age at the time of the offense." Iowa Code § 915.10(3) (2013).

At the re-sentencing hearing, the following people gave victim impact statements:

- David Homan (Jean Homan's son)
- Pete Zevenbergen (the Jean Homan's son-in-law)
- Carla Schaper (Jean Homan's daughter)
- Nancy Rieken (Jean Homan's daughter)
- Cathy Homan (Jean Homan's daughter-in-law)
- Robert Homan (Jean Homan's grandson)
- Matthew Zevenbergen (Jean Homan's grandson)

See generally re-sent. hrg. tr. pp. 9–33. These statements all displayed how the crime affected them and their family. *See generally* re-sent. hrg. tr. pp. 9–33. They were properly considered.

This Court should flatly reject the defendant's complaints. Recent juvenile-sentencing decisions have reopened the old wounds of families who thought justice had been served by the life-without-parole sentence imposed on their loved one's killer. *See* What We Believe, National Organization of Victims of Juvenile Murderers, http://www.teenkillers.org/index.php/about-us/who-we-are/ (last

accessed Oct. 19, 2016) (detailing how victims feel they have been mistreated by the juvenile-sentencing movement). Justice demands, at the very least, that courts hear victims' statements at the time of re-sentencing.

CONCLUSION

This Court should affirm the district court.

REQUEST FOR NONORAL SUBMISSION

Given the issues presented, the State does not believe oral argument will assist the court. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

    - This brief contains **4,409** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

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Dated: November 28, 2016

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